

John Heenan
HEENAN LAW FIRM
P.O. Box 2278
Billings, MT 59103
Telephone: (406) 839-9091
Facsimile: (406) 839-9092
john@heenanlawfirm.com

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

JUNE TIFT and TIMOTHY
McCOLLOUGH,

Plaintiffs,

vs.

JOHNSON, RODENBURG &
LAUINGER and CACV OF
COLORADO, LLC,

Defendants.

Cause No. CV-07-166-BLG-RFC-CSO

Judge Carolyn S. Ostby

**BRIEF IN SUPPORT OF PLAINTIFFS'
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Plaintiffs' Motion is governed by Rule 15(a) of the Federal Rules of Civil

Procedure, which provides in pertinent part as follows:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. . .

(emphasis added.) Generally, leave to amend is granted unless it would create unfair prejudice to another party or cause substantial delay. Baicker-McKee, FEDERAL CIVIL RULES HANDBOOK (West 2005) at pg. 419 (citing numerous federal cases).

In this instance, Plaintiffs seek, through the Amended Complaint, to remove Defendant CACV as a party defendant. (CACV was dismissed from the lawsuit on February 7, 2008.) Plaintiffs also assert that both the Tift and McCollough claims involve Defendant's filing of lawsuits outside the applicable statute of limitations. The proposed Amended Complaint does not name any new parties nor any substantive legal claims. This case is at an early stage, with no trial date or deadlines even set yet. The basis for Defendant's objection is apparently that it continues to permissively join Ms. Tift and Mr. McCollough as Plaintiffs in the same action. In this regard, the proposed Amended Complaint only clarifies the commonalities of law and fact presented by the Tift and McCollough claims.

Plaintiffs respectfully move the Court for leave to file the Amended Complaint attached as an exhibit to Plaintiff's Motion.

Dated this 6th day of March, 2008.

HEENAN LAW FIRM

/s/ John Heenan
John Heenan
Attorney for Plaintiffs